

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
T. A. Forsberg, Inc.)	File Number: EB-04-DT-334
)	
Okemos, MI)	NAL/Acct. No: 200532360002
)	
)	FRN 0002 7706 59

FORFEITURE ORDER

Adopted: December 21, 2005**Released: December 23, 2005**

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of six thousand dollars (\$6,000) to T.A. Forsberg, Inc. (“Forsberg”), owner of an antenna structure located in Okemos, Michigan, for willful and repeated violation of Section 17.4(a) of the Commission's Rules (“Rules”).¹ The noted violation involves Forsberg’s failure to register its antenna structure.

II. BACKGROUND

2. On April 23, 2004, agents from the Detroit Office conducted an inspection of a 303 foot antenna structure located at 2360 Jolly Oak Road, Okemos, Michigan, at the geographical coordinates of 42° 41’ 08” north latitude and 084° 26’ 14” west longitude. The agents observed no Antenna Structure Registration (ASR) number posted at the site. During the inspection, the agents were approached by Mr. Dennis Forsberg, who identified himself as President of T. A. Forsberg, Inc. Mr. Forsberg stated that his company owns the tower and that he believed the tower was registered with the Commission. When the agents accompanied Mr. Forsberg to the Forsberg business office, Mr. Forsberg was not able to produce any evidence that the antenna structure was registered with the Commission.

3. Commission agents searched the Commission’s ASR Database and found no evidence that Forsberg’s tower is registered. The agents also identified a *Notice of Violation* that had been issued to Forsberg on April 29, 1999 for failure to register the same antenna structure.² Commission records also showed that, subsequent to the issuance of the NOV, Forsberg filed an application to register the tower, but the application was dismissed and returned to Forsberg because a current FAA study was not submitted. The agents were not able to determine why the application was dismissed.

¹47 C.F.R. § 17.4(a).

²See *Notice of Violation*, File No. 99-DT-0255 (Compliance and Information Bureau, Detroit Office, April 29, 1999).

4. On June 30, 2004, the Detroit Office sent a Letter of Inquiry (“LOI”) to Forsberg, requesting, *inter alia*, information regarding the tower registration. The Detroit Office received a response from Mr. Forsberg on July 12, 2004. Mr. Forsberg stated “...our antenna structure has not yet been registered with the FCC. We do not have a current FAA study, which is required for the FCC registration. To have this study done, we are soliciting bids to have the tower brought into FAA and FCC compliance, and complete all the registration paperwork required.”

5. On July 20, 2004, the Detroit Office sent a second LOI to Forsberg seeking information about, *inter alia*, the status of the tower registration. Mr. Forsberg submitted a response to the LOI stating that “...our antenna structure has not been registered with the FCC. We have contacted B&L tower ... to bring the tower into compliance with FCC standards.”

6. On December 27, 2004, Mr. Forsberg submitted a letter stating that “[w]e . . . received our FAA Aeronautical Study on December 22, 2004, Study Number 2004-AGL-7303-OE. We have completed and submitted our FCC new antenna registration form, and have been granted an FCC Registration Number 1246625.” On January 20, 2005, a Commission agent conducted a search of the ASR database and determined that the tower was registered with the FCC on December 27, 2004.

7. On March 17, 2005, the Detroit Office issued a *Notice of Apparent Liability for Forfeiture* to Forsberg in the amount of six thousand dollars (\$6,000) for the apparent willful and repeated violation of Section 17.4(a) of the Rules.³ Although the base forfeiture amount for failure to file required forms is \$3,000, the proposed forfeiture amount was upwardly adjusted to \$6,000 because Forsberg had been aware of the unregistered tower since 1999 and had received three subsequent requests for information regarding the antenna structure registration. On April 7, 2005, Forsberg submitted a response to the NAL requesting a reduction of the proposed forfeiture.

III. DISCUSSION

8. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁴ Section 1.80 of the Rules,⁵ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”). In examining Forsberg’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶

9. Section 17.4(a) of the Rules states that the owner of any proposed or existing antenna structure that requires notice of proposed construction to the FAA must register the structure with the Commission.⁷ Forsberg does not deny that the tower remained unregistered from 1999 when a *Notice of*

³*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532360002 (Enf. Bur., Detroit Office, March 17, 2005) (“NAL”).

⁴47 U.S.C. § 503(b).

⁵47 C.F.R. § 1.80.

⁶47 U.S.C. § 503(b)(2)(D).

⁷47 C.F.R. § 17.4(a). Section 17.4(a)(2) requires owners of existing antenna structures that were assigned painting or lighting requirements before July 1, 1996, to register those antenna structures with the Commission no (continued....)

Violation was issued until the time the tower was registered in 2004. Forsberg, however, requests a reduction in the forfeiture amount on the ground that its actions were not willful or egregious. We decline to grant the request.

10. A "willful" violation under section 503(b) means "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁸ Mr. Forsberg states that an employee who had been tasked with registering the tower failed to do so and when the employee left the Forsberg company, the employee failed to advise Mr. Forsberg that the tower still was not registered. The "Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors,"⁹ and when the actions of independent contractors or employees have resulted in violations, the Commission has "consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations."¹⁰ Forsberg has not presented any evidence that this precedent should not apply here and therefore we decline to reduce the forfeiture on this basis.

11. We also decline to reduce the forfeiture based on the assertion that "as soon as [Forsberg] was made aware that . . . [the tower was] not registered or in compliance, [Forsberg] took immediate steps to bring the tower into compliance and get the appropriate paperwork completed." The Commission consistently has held that corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.¹¹ Even if the Commission reduced forfeitures based on immediate remedial efforts, Forsberg's efforts were not immediate. The tower remained unregistered from the time agents first notified Forsberg of the problem in 1999 until the time the tower was registered in 2004. Moreover, for the reasons stated in the preceding paragraph, Forsberg is considered responsible for the failure to register the tower as of 1999, notwithstanding the fact that a Forsberg employee may have been responsible for the failure to register and may not have advised Mr. Forsberg that the tower had not yet been registered when the employee left the Forsberg company.

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later than July 1, 1998. 47 C.F.R. § 17.4(a)(2). Forsberg's antenna structure was assigned painting and lighting requirements by the FAA in 1988, so registration was required by July 1, 1998.

⁸Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' . . . means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁹*Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863,-64, para. 7 (2002); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34 (1991)(holding that a company's reliance on an independent contractor to construct a tower in compliance of FCC rules does not excuse that company from a forfeiture); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972) (holding a licensee responsible for violations of FCC rules despite its reliance on a consulting engineer); *Petracom of Joplin, L.L.C.*, 19 FCC Rcd 6248 (Enf. Bur. 2004)(holding a licensee liable for its employee's failure to conduct weekly EAS tests and to maintain the "issues/programs" list).

¹⁰*American Paging, Inc. of Virginia*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 10417, 10420, para. 11 (Enf. & Cons. Inf. Div., Wireless Tel. Bur. 1997) (quoting *Triad Broadcasting Company*, 96 FCC 2d 1235, 1244 (1984)).

¹¹See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

12. Thus, based on the evidence, we find that Forsberg willfully and repeatedly¹² violated Section 17.4(a) of the Rules by failing to register its antenna structure. We also continue to believe that an upward adjustment in the forfeiture amount is warranted in light of Forsberg's failure to register the tower for more than four years after the issuance of the *NOV* and even then only as a result of a follow-up investigation by FCC agents.

13. We have examined Forsberg's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Forsberg willfully and repeatedly violated Section 17.4(a) of the Rules. We find no basis for cancellation or reduction of the \$6,000 forfeiture proposed for these violations.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,¹³ T.A. Forsberg, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six thousand hundred dollars (\$6,000) for willfully and repeatedly violating Section 17.4(a) of the Rules.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁴ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹⁵

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to T.A. Forsberg, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Russell Monie, Jr.
Regional Director, Northeast Region

¹²The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

¹³47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁴47 U.S.C. § 504(a).

¹⁵See 47 C.F.R. § 1.1914.

Enforcement Bureau